

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>89-11667</u>
RICKY LEE PENNINGTON	)	
REBECCA POOLE PENNINGTON	)	
	)	
Debtors	)	
_____	)	
FIRST NATIONAL BANK & TRUST CO.	)	FILED
	)	at 4 O'clock & 10 min P.M.
Movant	)	Date: 8-23-90
	)	
vs.	)	
	)	
RICKY LEE PENNINGTON	)	
	)	
Respondent	)	

**ORDER**

First National Bank & Trust Co. ("First National") the holder of an allowed claim in this Chapter 13 proceeding seeks relief from the co-debtor stay of 11 U.S.C. §1301<sup>1</sup>. The debtors

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<sup>1</sup>11 U.S.C. §1301 provides:

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter [11 USC §1301 et seq.], a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless

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(1) such individual became liable on or

secured such debt in the ordinary course of such individual's business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title [11 USC §701 et seq. or 1101 et seq.].

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that -

(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

(2) the plan filed by the debtor proposes not to pay such claim; or

(3) such

oppose the relief requested. The facts are not disputed. The debtors filed a voluntary petition under Chapter 13 of Title 11 United States Code on October 27, 1989. The proposed Chapter 13

plan submitted at the time of filing was modified pre-confirmation on January 2, 1990. The modified Chapter 13 plan in part pertinent to this proceeding provided:

2(b) Secured creditors shall retain liens securing their claims. Creditors who file claims and whose claims are allowed as secured claims shall be paid the lesser of (1) the amount of their claim, or (2) the value of their collateral as set forth here: First Nat'l Bank of Louisville \$2,750.00.

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creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c) (2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

The current defaults of the debtor(s), if any, on the claims of secured creditors . . . are waived and shall be cured by the completion of this plan.

3(a) By failing to object to this plan, or any modification thereof, all creditors holding claims agree not to make any effort to collect their claims from any co-signers that may exist, so long as the case remains pending.

Additionally, the plan provided for a pro-rata distribution from remaining funds subsequent to the payment of secured claims to creditors holding unsecured claims, including the unsecured balance of any partially secured claim. First National objected to confirmation, but withdrew its objection at the confirmation hearing on March 23, 1990.

The modified plan was confirmed by order dated March 23, 1990. The order of March 23, 1990 in addition to confirming the proposed modified plan also allowed the claim of First National in the amount of Four Thousand Three Hundred Thirty and 38/100 (\$4,330.38) Dollars. In accordance with the plan provisions Two

Thousand Seven Hundred Fifty and No/100 (\$2,750.00) Dollars was allowed as a secured claim and in accordance with Bankruptcy Local Rule 8<sup>2</sup> future interest will be paid on the allowed secured claim at

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<sup>2</sup>Bankruptcy Local Rule 8 provides:

11 U.S.C. §502 provides in relevant part that a proof of claim filed in accordance with §501 is deemed allowed unless objected to by a party in

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interest and further provides that upon objection the claim shall be allowed "except to the extent that - - (2) such claim is for unmatured interest."

It has been called to the attention of the court by parties before it that many creditors are regularly filing claims which include not only the principal balance of a debt as of the date of the filing of a debtor's case but which also include future interest on said claims.

Without in any way limiting or amending any other provision of the Code of Rules that govern the filing of proofs of claim, all claims filed in this court shall hereafter be filed for the net principal balance only as of the date of the debtor's filing of his or her case.

Unless otherwise ordered by the Bankruptcy Judge, the Chapter 13 Trustee is directed to pay interest at a rate of 12% per annum on all allowed secured claims and is further directed to file objections to or notify debtor's counsel with respect to any claim which is not filed in accordance with the terms of this order.

The sanction provisions of Bankruptcy Rule 9011 apply claims filed in violation

the rate of 12% per annum. The balance of the allowed claim, One Thousand Five Hundred Eighty and 38/100 (\$1,580.38) Dollars was

allowed as an unsecured claim and will be paid a pro rata dividend of 17.82%. The order issued March 23, 1990 titled "ORDER CONFIRMING PLAN; ORDER ALLOWING CLAIMS; ORDER DIRECTING DISTRIBUTION, ET AL." provides:

It having been determined that after hearing on notice that the plan complies with the provisions of Chapter 13, and with all other applicable provisions of Title 11, that all fees, charges or amounts required under Chapter 123 of Title 28 or by the plan, to be paid before confirmation, have been paid; that the debtor's payments commenced within 30 days after the plan was filed; that the plan has been proposed in good faith and not by any means forbidden by law; that the value as of the effective date of the plan, or property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7 of Title 11; that with respect to each allowed secured claim provided for, the holder has accepted the plan or the plan provides that the holder shall retain the liens securing the claim and the value to be distributed under the plan is not less than the allowed amount of such claim; that the plan provides for distribution of property to an allowed unsecured claim in the amount of the claim or commence all disposable income for the next three years to the plan payments; and that the debtor will be able to make all payments under the plan and to comply with the plan.

It is therefore ORDER, ADJUDGED AND DECREED:  
(1) Good cause having been shown, the plan is

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of applicable provisions  
of the Bankruptcy Code and  
Rules.

confirmed

On March 29, 1990, First National brought its motion for relief as to the co-debtor pursuant to 11 U.S.C. §1301(c).

The provisions of a confirmed plan bind the debtor and

each creditor whether or not such creditor has objected to, has accepted or has rejected the plan. 11 U.S.C. §1327(a). A confirmed plan is res judicata as to all justiciable issues decided. 5 Collier on Bankruptcy ¶1327.01 (L. King 15th Ed. 1989) see also In re: Gregory 705 F.2d 1118, 1121 (9th Cir. 1983); In re: Abercrombie 39 B.R. 178, 179 (Bankr. N.D.Ga. 1984); In re: Flick 14 B.R. 912, 918 (Bankr. E.D. Pa. 1981). This court determined in its order of confirmation that the plan was proposed in good faith and not by any means forbidden by law and thereby concluded that the provisions of the plan designated "3(a)" providing for the continued injunctive relief against co-debtor collection efforts meet the plan provision requirements of 11 U.S.C. §1322(b) (10)<sup>3</sup>. This determination is not subject to collateral attack by a §1301 motion

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<sup>3</sup>11 U.S.C. §1322(b) (10) provides in pertinent part:

(b) . . . the plan may -

(10) include any other appropriate provisions not inconsistent with this title.

for relief from stay.<sup>4</sup> First National had every opportunity to litigate the propriety of the now complained of plan provision prior to

confirmation but choose not to and is now bound by its decision.

The issue before the court is not whether a plan may permissibly contain a provision which expands the scope of 11 U.S.C. §1301 but rather, once a plan containing such a provision has been confirmed, does that the order of confirmation bind the creditor. The answer must be found within §1327(a), or as one court has put it, "The question boils down to this: Does §1327(a) means what it says?" In re: Evans 22 B.R. 980, 982 (Bankr. S.D. Cal. 1982) aff'd 30 B.R. 530 (9th Cir. BAP 1983). This court concludes that it does.<sup>5</sup> Having determined that the provisions of the confirmed plan bind this creditor, the motion for relief from the co-debtor stay is ORDERED denied.

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<sup>4</sup>The propriety of the 3(a) plan provision was not questioned at confirmation and is not reached by his order. For decisions addressing the propriety of such injunctive relief against co-debtor collection efforts see, e.g. In re: Bonanno 78 B.R. 52 (Bankr. E.D. Pa. 1987); City Loan & Savings Company v. Betts (In re: Betts), 8 B.R. 799 (Bankr. S.D. Oh. 1981); Household Finance Corp. v. Weaver (In re: Weaver) 8 B.R. 803 (Bankr. S.D. Oh. 1981) c.f. old Phoenix National Bank v. Britts (In re: Britts) 18 B.R. 203 (Bankr. N.D.

<sup>5</sup>The plan as confirmed requires First National to wait until the conclusion of the debtors' plan performance before pursuing collection of any deficiency against the co-debtor. The confirmed plan merely requires First National to wait. The confirmed plan does not effect First National's substantive claim against the co-debtor. Upon successful completion of the plan or voluntary or involuntary dismissal short of plan completion, First National will be at liberty to pursue the balance of its debt from the co-debtor in accordance with its contract and applicable state law.



JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 23rd day of August, 1990.